

1510 IDENTIFYING AND COLLABORATING WITH TRIBAL AGENCIESChapter: **Case Management Standards for CP and JJ Field Services**Section: **Engaging Families**

New Hampshire Division for Children, Youth and Families Policy Manual

Policy Directive: **13-14**Effective Date: **July 2013**

Scheduled Review Date:

Approved:

A handwritten signature in blue ink that reads "Maggie Bishop".

Maggie Bishop, DCYF Director

Related Statute(s): [RSA 169-B](#), [RSA 169-C](#), and [RSA 169-D](#)

Related Admin Rule(s):

Related Federal Regulation(s): [25 USC 1903](#), [25 USC 1911](#), [25 USC 1922](#), [SSA 471](#), [SSA 472](#), [SSA 473](#), [SSA 475](#), and [1356.67](#)

Related Form(s):

Bridges' Screen(s) and Attachment(s):

It is our responsibility to understand children and families within the context of their own family rules, traditions, history and culture. This policy supports the Practice Model beliefs and guiding principles that family members know the most about their own families and that all children/youth belong with their family. Consistent with the Indian Child Welfare Act, the Division for Children, Youth and Families believes that Indian children are best raised within their tribes and families, to support their families' beliefs and values and maintaining their tribes' culture and language. All children and youth deserve permanency and DCYF is committed to working with any tribal agencies to support this end.

Purpose

This policy ensures that staff are aware of the Indian Child Welfare Act and establishes and maintains procedures for the transfer of responsibility for the placement and care of a child in Child Protective Services, or Juvenile Justice Services through a Child In Need of Services Case, to a Tribal Title IV-E agency or an Indian Tribe with a Title IV-E agreement. Although New Hampshire does not have any federally recognized Indian tribes, DCYF will work with Indian tribes in other states to meet the permanency, safety, and well-being of a child Indian tribe member or child eligible to be a member of an Indian tribe.

Definitions

"Assessment" means a protective investigation as it is maintained in the NH Statewide Automated Child Welfare Information System (SACWIS), Bridges.

"CPS" means Child Protective Services under DCYF.

"CPSW" means a Children Protective Services Worker employed by DCYF.

"DCYF" or the "Division" means the DHHS Division for Children, Youth and Families.

"DHHS" or the **"Department"** means the New Hampshire Department of Health and Human Services.

"ICWA" means the Indian Child Welfare Act, a federal law included in the United States Code and noted as 25 USC which provides requirements specific to the placement of Indian children in out-of-home care and the case practices that follow.

"Indian Child" means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

"JJS" means Juvenile Justice Services under DCYF.

"JPPO" means a Juvenile Probation and Parole Officer employed by DCYF.

"Parent" means any biological parent(s) of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established (putative fathers).

"Indian Custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child.

"Indian Tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 1602(c) of title 43

"Indian Child Custody Proceeding" means a child custody proceeding within the meaning of Section 1903 of the Indian Child Welfare Act, including a voluntary or involuntary proceeding that may result in an Indian child's temporary or long-term foster care or guardianship placement if the parent or Indian custodian cannot have the child returned upon demand, termination of parental rights, or adoptive placement.

Policy

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| <ul style="list-style-type: none">I. To protect the best interest of Indian children and to promote the stability and security of Indian tribes and families, staff must follow established Federal standards for working with families and Indian tribes to support Indian children.<ul style="list-style-type: none">A. Pursuant to 25 USC 1911(a) an Indian tribe has exclusive jurisdiction over any custody proceedings regarding an Indian child.<ul style="list-style-type: none">1. 25 USC 1903(1) defines a child custody proceeding as action resulting in foster care placement, termination of parental rights, pre-adoptive placement, or adoptive placement.2. 25 USC 1903(1) states that a child custody proceeding does not include placements resulting from an act which, if committed by an adult, would be deemed a crime, or an award in a divorce proceeding to one of the parents.II. DCYF staff must determine as soon as possible if the child(ren)/youth or family are members of an Indian tribe or may be eligible to be members of an Indian tribe.<ul style="list-style-type: none">A. Child Protective Intake staff will inquire of a reporter if the child(ren)/youth or family have Native American heritage and if so, what tribal affiliation is known.B. Inquiry into a child's tribal status is not limited to the initiation of a CPS referral. The Division for Children, Youth and Families will be mindful to inquire about family history and genealogy with each parent/guardian that is party to a CPS referral, or CPS or JJS case to explore any Native American Heritage. |
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1. Staff must explore any Native American heritage at the beginning of involvement with a child/youth or family, and through the life of the Division's relationship with the child/youth or family.
 2. Whether or not the child/youth is in the custody of an Indian parent or an Indian custodian, the child/youth's Native American Heritage must be explored.
 3. If there is reason to believe that a child has Native American heritage, the CPSW/JPPPO must inquire with the parents and extended family to identify the tribal affiliation and the child/youth's status as a member of the tribe.
- III. DCYF staff will contact the tribal child welfare staff to determine the status of the tribal membership or eligibility for membership.
- A. Any information obtained that confirms or denies the child(ren)/youth's membership or eligibility must be documented in the Bridges Contact Log.
 - B. ICWA must be followed for children of all federally recognized tribes.
 1. DCYF honors the Native American heritage of all Indian children.
- IV. Upon confirmation of a tribal member's status, DCYF will provide notice to the Tribal Child Welfare Agency regarding the Division's involvement with the Indian child.
- A. The Tribal Child Welfare Agency will be invited to participate in a CPS assessment or a JJS CHINS process as soon as possible.
 1. If the Tribal Child Welfare Caseworker is not able to attend the initial visit, the family will be given the name and contact information so they may contact the Tribal Child Welfare Caseworker.
 2. DCYF recognizes that in some instances geographic barriers will hinder the Tribal Child Welfare Caseworker from active involvement in an assessment and DCYF will strive to maintain open communication.
 - B. The Tribal Child Welfare Caseworker will be treated as a partner and will have shared jurisdiction in the completion of interviews, review of collateral information, and making decisions.
 - C. It is important that the two caseworkers present a cohesive working relationship to best meet the family's needs and assist them in planning for their child(ren)/youth's needs regarding safety, permanency, and well-being.
- V. DCYF CPS and JJS practices will be completed pursuant to policy with addition of:
- A. Consultation with the Tribal Child Welfare Caseworker to review their agency history with the parent(s)/Indian custodian(s);
 - B. Consultation with the Tribal Child Welfare Caseworker to request criminal background checks for Indian child, parent(s), or Indian custodian(s) as needed and to contact tribal law enforcement;

- C. The Preliminary Safety Decision will include the Tribal Child Welfare Caseworker (or supervisor) if they were able to participate in the initial contacts. If the tribal child welfare staff is unavailable, DCYF will proceed with decision making but will document the attempts to consult with the Tribal Child Welfare Caseworker and will inform the Tribal Child Welfare Caseworker of the decisions as soon as possible; and
 - D. Engagement in Safety Planning whenever signs of danger are present. The Tribal Child Welfare Caseworker will be an equal planner/decision maker in the Safety Planning process. The services that the Tribal Child Welfare Agency may be able to provide will be considered as part of the safety planning.
- VI. If petitions for abuse and/or neglect are filed, no adjudicatory hearing may be heard until at least 10 days after receipt of the notice/petitions by the parent(s), or Indian custodian, and tribe.
- A. The parent, Indian custodian, or tribe may request, and will be granted, up to an additional 20 days to prepare for the hearing.
 - B. Pursuant to RSA 169-C:15 III(d), the adjudicatory hearing must be held and completed, with written orders issued within 60 days of the date the petitions were filed.
 - 1. If the Indian child has been placed in out-of-home care, an adjudicatory hearing must be held and completed within 30 days of the date the petitions were filed, unless the court makes a written finding of extraordinary circumstances requiring the time limit to be extended.
- VII. When circumstances rise to the level of immediate risk of serious harm, a petition must be filed to request an ex-parte order that it is contrary to the child/youth's welfare to remain in the home;
- A. The Indian child's parents and tribe must be provided an opportunity to identify placement preferences;
 - B. The caseworker will make every effort to ensure that the placement of an Indian child, in both an emergency and non-emergency situation, is completed with and has the approval of the Tribal Child Welfare Agency. When this is not possible the Tribal Child Welfare Agency will be notified as soon after the placement as possible, not to exceed 5 business days;
 - C. Active remedial efforts (a standard higher than reasonable efforts) to prevent removal must be documented and should include the available resources of the extended family, the tribe, Indian social services agencies, and the individual parent(s)/Indian custodian(s);
 - D. Clear and convincing evidence must be present that the Indian child is likely to suffer serious emotional or physical damage if maintained in either parents' custody or with the child's Indian custodian;
 - E. The tribe must receive written notification before an Indian child may be removed from his or her family or placed in an adoptive or foster care placement. Collaborating with the tribe during the assessment or case does not negate the official written notification that must be sent;
 - 1. If the specific tribe the child is either a member or eligible for membership in is known, a cover letter providing notification of the circumstances and the petition must be sent to the tribe certified with a return receipt requested.

2. If the specific tribe is not known and verified, the notice and petition should be sent to the Secretary of Interior identified by the Bureau of Indian Affairs, certified with a return receipt requested.
 - (a) The Secretary of Interior has 15 days following receipt of the letter to provide the notice to the parent, or Indian custodian, and tribe.
- F. Any Indian child entering out-of-home care should be placed in a setting that complies with the standards for ICWA and is the least restrictive setting.
- G. Pursuant to 25 USC 1922, nothing in the Indian Child Welfare Act shall be construed to prevent the emergency removal of an Indian child from his/her parent(s) or Indian Custodian, or prevent the emergency placement of such Indian child in a foster home or institution under NH state law, to prevent imminent physical damage or harm to the Indian child.
 1. DCYF will ensure that the placement terminates immediately upon resolution of the imminent risk; or
 2. The transfer of jurisdiction to the appropriate Tribal Court.
- VIII. Either parent, the Indian custodian, or the Indian child's tribe may request verbally or in writing to transfer the jurisdiction to an applicable tribal court at any point through the life of the case.
 - A. The petition is the first opportunity for a tribe to request that the case be transferred to tribal court.
 - B. Diligence in providing notice early in a case will better meet the child(ren)/youth's need for permanency as parties do not lose their right to request a transfer if they are unable to be located and may request a transfer later in the case.
 - C. Any matter petitioned for transfer to a tribal court must be upheld/transferred unless:
 1. Either parent objects to such transfer;
 2. The Tribal Court declines jurisdiction; or
 3. The court determines that good cause exists to deny the transfer, which may include:
 - (a) The Indian child's tribe does not have a tribal court;
 - (b) The proceeding is at an advanced stage AND the petitioner did not file the petition promptly; or
 - (c) The Indian child is over 12 years old and objects to the transfer.
 - (d) DCYF will cooperate to support the transfer of placement and care responsibility to a Tribal Title IV-E agency or an Indian Tribe with a Title IV-E agreement in the same manner a child/youth would be transferred to another state pursuant to [DCYF Policy 1585 ICPC When NH is the Sending State](#) or [DCYF Policy 1591 Interstate Compact for Juveniles - Travel Permit, Transfer of Supervision, and Other Provisions](#).

- IX. Unless the Court has made a judicial finding that there is good cause to deviate from ICWA placement preferences or the Indian child's tribe has established a different order of preference, the order of placement preference will be as follows:
- A. A member of the Indian child's extended family (either Native or non-Native);
 - B. A foster home licensed, approved, or specified by the Indian child's tribe;
 - C. An Indian foster home licensed/approved by an authorized non-Indian licensing authority;
 - D. An institution for children approved by an Indian tribe or operated by an Indian organization, which has a program suitable to meet the Indian child's needs; or
 - E. When no preferred placement is available as specified above, active efforts will be made to place the Indian child with a family committed to enabling the child to have extended family visitation and participation in the cultural, spiritual, religious, and ceremonial activities of the Indian child's tribe.
- X. The approval of Native American resource homes, either on the reservation or within other tribal lands, is conducted by the tribe.
- XI. The approval process of Native American resource homes not on the reservation or other tribal lands will be conducted by the tribe unless they request that DCYF conduct the licensing of the home.

Practice Guidance

How many federally or state recognized tribes are there in NH?

- o New Hampshire does not have any federally recognized or state recognized tribes at this time. However, although there are not any federally or state recognized tribes in NH, there are multiple federally and state recognized tribes in New England.

How do I know if a tribe is federally recognized and who the Secretary of Interior is?

- o Federally recognized tribes and contact information can be found through the US Department of the Interior, Bureau of Indian Affairs website <http://www.bia.gov>.

Does ICWA apply to delinquency cases?

- o No. Pursuant to the United States Code, ICWA applies to cases in which there is a child custody proceeding and does not include placements resulting from an act, which, if committed by an adult, would be deemed a crime. This means that if a delinquency petition is brought forward and the child/youth is later placed, ICWA does not apply. However, for the permanency of the child/youth it is important to work with any identified Tribes to support the youth, when possible.

Is there someplace I can learn more about ICWA?

- o If you are looking for training materials and resources contact the Center for Professional Excellence, CPE at (603) 271-4732 or contact your identified CPE Training Liaison to discuss learning opportunities.